IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10543 OF 2004

Pratapsingh Vijaysing Padode. .... Petitioner.

Versus

Raju Baban Pawar & Ors..... Respondents.

Mrs. A. R. Lambay i/by M/s. Lambay & Co.,
for the Petitioner.

None for the Respondents.

CORAM : S. A. BOBDE, J.

DATED : 7TH JUNE, 2005.

P.C.:

This writ petition is directed against the concurrent order of both the courts below granting temporary injunction to the Respondents/Plaintiffs.

2. The Respondents instituted a suit for a declaration that in pursuance of a Sale Deed dated 12th August, 1999 for a consideration of Rs.96,000/-, they had become absolute owner of an agricultural land admeasuring 2 H & 40 R of Gut No. 179 at Village Mangrul, Taluka Mawal. In this suit they moved an application for temporary injunction restraining

present Petitioner from disturbing their possession.

3. The Petitioner has resisted this application by contending that the Plaintiffs have derived no title under the Sale Deed dated 12th August, 1999 since it was executed by one Bandu Mohite, who was not given a power of attorney to sell the suit land. The trial Court observed that this property was not specifically mentioned in the power of attorney given by Bandu Mohite, but observed that apart from a police complaint no action was taken by the Petitioner against Bandu Mohite. No action has admittedly been taken for cancellation of the Sale Deed or any other, by the Petitioner till the filing of this suit by the Respondents, even though the Petitioner cancelled the power of attorney in favour of Bandu Mohite in the year 2000.

4. Having regard to the fact that prima facie the Respondent’s possession over the suit land has been established, the trial Court granted injunction. The Appellate Court has also concurred with the finding of the trial Court in respect of the possession of the Respondents. The Appellate Court has, vide para 11, in fact observed that Bandu Mohite was authorised to

manage and sell the suit property also which bears Gut No. 179, and that there is a clear recital to that effect in the power of attorney.

5. In view of the finding that the Respondents have come into possession of the land under a registered Sale Deed dated 12th August, 1999, for consideration even though the registration is disputed by the Petitioner, I see no error of law apparent on the face of the record in the finding recorded by the courts below. The matter will have to be finally adjudicated in the Civil Suit. The trial Court shall proceed to determine the suit in accordance with law without being influenced by any interim order including the order of this Court upholding the grant of temporary injunction. The trial Court is directed to dispose of the suit within a period of one year from today.

6. Writ Petition is, accordingly, dismissed.

Sd/-

(S. A. BOBDE, J.)